

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

366X0273

SENATE BILL NO. 137

Introduced by: Senator Brown and Representative Conzet

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning telecommunications
2 and internet services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-31-1 be amended to read:

5 49-31-1. Terms used in this chapter mean:

6 (1) "Addressable," enabling users to connect and communicate with a specific party
7 easily and securely on a dial-up, addressable basis;

8 (2) "Available," ensuring that network services are available if the user requires them,
9 even at times of peak usage; designed to be a nonblocking network, minimizing
10 network contention;

11 (3) "Broadband network," the broadband network extends the range of fully switched,
12 addressable, robust transport services over the fiber network which increase in
13 multiples of OC-1 (51.84 Mbps), including OC-3 (155.52 Mbps) and OC-12 (622.08
14 Mbps);

15 (4) "Centron and centron-like services," services ~~which~~ that provide custom switching



1 features which include distributive dial tone, select number screening, toll restriction
2 and screening, nonattendant busy out, nonattend and call transfer, and select trunk
3 hunting and screening;

4 (5) "Commission," the Public Utilities Commission;

5 (6) "Common carrier," anyone who offers telecommunications services to the public;

6 (7) "Eligible telecommunications carrier," a local exchange carrier designated by the
7 commission pursuant to 47 U.S.C. § 214(e) as of January 1, 1998, as eligible to
8 receive universal service support funding;

9 (8) "Feature rich," providing the specific features and functionality required by users'
10 voice, data, video, graphics, imaging, and multimedia applications; functionally
11 beyond mere transport;

12 (8A) "Financial institution," any financial institution as defined in 15 U.S.C. § 6827 as of
13 January 1, 2003, including any financial institution affiliate that controls, is
14 controlled by, or is under common control with the financial institution;

15 (9) "Incumbent local exchange carrier," a local exchange carrier, including successors
16 and assigns, which was providing local exchange service within a defined service
17 area in this state on or before February 8, 1996;

18 (10) "Interexchange telecommunications service," telecommunications service between
19 points in two or more exchanges;

20 (11) "Internet Protocol-enabled service" or "IP-enabled service," any service, capability,
21 functionality, or application provided using internet protocol that enables an end user
22 to send or receive a communication in internet protocol format regardless of whether
23 the communication is voice, data, or video;

24 (12) "LATA," a local access and transport area;

1 ~~(12)~~(13) "Local exchange area," any geographic area established by a local exchange
2 carrier as filed with or approved by the commission for the administration of
3 local telecommunications service which may consist of one or more central
4 offices or wire centers together with associated facilities used in furnishing
5 telecommunications service in that area;

6 ~~(13)~~(14) "Local exchange service," the access to and transmission of two-way switched
7 telecommunications service within a local exchange area;

8 ~~(13.5)~~(15) "Mobile telecommunications service," any commercially available
9 interconnected mobile phone service that provides access to the public
10 switched telephone network through mobile communications devices
11 employing radio wave technology to transmit calls;

12 ~~(14)~~(16) "Narrowband network," a fully switched digital network covering the transport
13 range from 0 to 144,000 bits per second (144 Kbps), offering two 64 Kbps
14 information B (Bearer) channels and a 16 Kbps signaling D (Delta) channel;

15 ~~(15)~~(17) "New products and services," any new product or service introduced after July
16 1, 1988, which is not functionally required to provide local exchange service.
17 Repackaging of any product or service which is fully competitive with any
18 service regulated as emerging competitive or noncompetitive is not considered
19 a new product or service;

20 ~~(16)~~(18) "Optional service," any limited or discretionary service offered by a
21 telecommunications company which is not functionally required for the
22 provision of noncompetitive services and which the customer has the option
23 to purchase;

24 ~~(17)~~(19) "Private," ensuring confidentiality and integrity of network transport of

1 messages without dependency on specialized customer premise security
2 devices;

3 ~~(18)~~(20) "Rate of return regulation," the procedure used by the commission to approve
4 the charge for a service which gives due consideration to the public need for
5 adequate, efficient, and reasonable service and to the need of the public utility
6 for revenues sufficient to enable it to meet its total current cost of furnishing
7 such service, including taxes and interest, and including adequate provision
8 for depreciation of its utility property used and necessary in rendering service
9 to the public, and to earn a fair and reasonable return upon the value of its
10 property;

11 ~~(19)~~(21) "Register," a list of names and telephone numbers of residential telephone
12 subscribers who have properly enrolled to prevent unsolicited telephone calls;

13 ~~(20)~~(22) "Residential telephone subscriber," any person residing in the state who has
14 residential telephone service, including cellular service, personal
15 communications service, and wireless local loop service, primarily used for
16 personal use;

17 ~~(21)~~(23) "Robust," easily and economically sustaining the rigors of growth and
18 extensive public use;

19 ~~(22)~~(24) "Rural telephone company," any local exchange company as defined in 47
20 U.S.C. § 153(37) as of January 1, 1998;

21 ~~(23)~~(25) "Secure," physically precluding unwanted access to network and information;

22 ~~(24)~~(26) "Service area," a geographic area established by the commission for the
23 purpose of determining universal service obligations and support mechanisms.
24 For a rural telephone company, the service area is the company's study area or

any other area designated jointly by the commission and the Federal Communications Commission pursuant to 47 U.S.C. § 214(e)(5) as of January 1, 1998;

~~(25)~~(27) "Standard," supporting universal interfaces and networking standards and protocols of generally accepted standards setting bodies;

~~(26)~~(28) "Switched," providing circuit, packet, or channel type switching, each suited to specific application requirements;

~~(27)~~(29) "Switched access," any exchange access service purchased for the origination and termination of interexchange telecommunications services which includes central office switching and signaling, local loop facility, or local transport;

~~(28)~~(30) "Telecommunications company," any person or municipal corporation owning, operating, reselling, managing, or controlling in whole or in part, any telecommunications line, system, or exchange in this state, directly or indirectly, for public use. For purposes of this definition the term, for public use, means for the use of the public in general or for a specific segment of the public, or which connects to the public in general or for a specific segment of the public, or which connects to the public switched network for access to any telecommunications service;

~~(29)~~(31) "Telecommunications service," the transmission of signs, signals, writings, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, electromagnetic means, or other similar means. It does not include the provision of terminal equipment used to originate or terminate such service, broadcast transmissions by radio, television, and satellite stations regulated by the Federal Communications Commission and one-way cable

1 television service;

2 ~~(30)~~(32) "Telephone solicitation call," any call made to a South Dakota consumer by
3 a telephone solicitor, originating from South Dakota or elsewhere, for the
4 purpose of soliciting a sale of any consumer goods or services to the person
5 called, for the purpose of soliciting an extension of credit for consumer goods
6 or services to the person called, or for the purpose of obtaining information
7 that may be used for the direct solicitation of a sale of consumer goods or
8 services to the person called or an extension of credit for such purposes;

9 ~~(31)~~(33) "Telephone solicitor," any person or organization who individually or through
10 salespersons, makes or causes to be made a telephone solicitation call. This
11 term does not include any not-for-profit or charitable organization exempt
12 from federal income taxation pursuant to section 501(c)(3) of the Internal
13 Revenue Code of 1986 as of January 1, 2003, which makes telephone calls
14 solely to solicit a charitable donation;

15 — ~~(32)~~ Repealed by SL 2007, ch 266, § 3.

16 (34) "Voice over Internet Protocol service" or "VoIP service," a service that:

17 (a) Enables real-time, two-way voice communication;

18 (b) Requires a broadband connection from the user's location;

19 (c) Requires internet protocol-compatible customer premises equipment; and

20 (d) Permits a user to generally receive a call that originates on the public switched
21 telephone network and to terminate a call to the public switched telephone
22 network. The term does not include a service that uses ordinary customer
23 premises equipment with no enhanced functionality that originates from and
24 terminates on the public switched telephone network, undergoes no net

protocol conversion, and provides no enhanced functionality to end users due to the provider's use of internet protocol technology;

~~(33)~~(35) "Wideband network," the wideband network extends the range of fully switched, digital, addressable information transport from the 144 Kbps to the DS3 rate of 44.736 Mbps, including the DS1 and DS2 rates of 1.544 Mbps and 6.312 Mbps, respectively;

~~(34)~~(36) "Wireless telephone number information," the telephone number, electronic address, and any other identifying information by which a calling party may reach a subscriber of mobile telecommunications service, and that is assigned by a mobile telecommunications service provider to a subscriber, and includes the subscriber's name and address.

Section 2. That chapter 49-31 be amended by adding a NEW SECTION to read:

Except as otherwise provided in this section, no VoIP service, IP-enabled service, or any combination thereof, is subject to the jurisdiction or supervision of, or regulation or control by any state agency, including the commission, or political subdivision of the state.

VoIP service is subject to the following:

- (1) Any required assessment of 911 or E911 fee;
- (2) The fee imposed under § 49-31-51; and
- (3) The gross receipts tax under chapter 10-33 or 10-33A, as applicable.

Nothing in this section affects or modifies the authority of the attorney general to take any action pursuant to chapter 37-24, or any provision which provides that a violation of that provision constitutes a violation under chapter 37-24.

Nothing in this section affects or modifies any obligation to offer noncompetitive telecommunications services.

1 Nothing in this section affects or modifies any entity's obligations or rights or commission
2 authority under 47 U.S.C. §§ 251 and 252, as of January 1, 2016.